

Cooperative Agreement
BETWEEN THE COMMISSIONER
ALASKA DEPARTMENT OF NATURAL RESOURCES
STATE OF ALASKA
AND THE
ALASKA STATE DIRECTOR
BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF INTERIOR

Bonding of Mining Operations on BLM Land
Through the State of Alaska Mining Reclamation Bonding Pool

THIS AGREEMENT is entered into between the State of Alaska, Department of Natural Resources, hereinafter called ADNR, and the Alaska State Office, Bureau of Land Management, U.S. Department of Interior, hereinafter called BLM.

I. Purpose: The purpose of this AGREEMENT is to define ADNR's and BLM's respective responsibilities pertaining to the administration of bonding for mining explorations and mining operations for locatable minerals under federal law on BLM lands in Alaska through the State of Alaska's statewide bonding pool.

II. Authorities: Authority for this AGREEMENT is based on the following:

A. ADNR

1. Alaska Statutes (AS) 27.19; November 1996.
2. Mining Reclamation Regulations 11 AAC 97; October 1995.
3. Pursuant to 11 AAC 97.700, ADNR has made a written finding that the state's best interest will be served by this agreement.

B. BLM

1. Sections 302, 303, and 307 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, 43 U.S.C. 1732, 1733, and 1737.
2. Title 43 of the Code of Federal Regulations (43 CFR), subparts 3809 and 3715.

III. Definitions:

- A. Exploration and mining operations: Activities and operations defined under Alaska Statute AS 27.19, Mining Reclamation Regulations 11 AAC 97, and exploration and operations defined under BLM's 43 CFR 3809.5.
- B. Notice level operation: Operations, including reclamation measures, which require a notice of intent to conduct operations on BLM lands in accordance with 43 CFR 3809.21 and 3809.300 through .336.
- C. Plan level operation: Operations, including reclamation measures, which require approval of a plan of operations in accordance with 43 CFR 3809.11 and 3809.400 through .412 on BLM lands and AS 27.19.030 on state lands.
- D. BLM lands: Those lands under the management authority of the Alaska State Director, BLM.
- E. State lands: Those lands under the management authority of ADNR.

- F. Authorized Officer: BLM or ADNR employee having the authority to review and accept a notice of intent or approve a plan of operations or reclamation plan.
- G. Statewide bonding pool: Bonding pool established in Alaska by AS 27.19.040 and implementing regulations in 11 AAC 97.

IV. Bonding and Statewide Bonding Pool Program Requirements:

- A. **Full Funding to Reclaim an Operation in Default.** While there are differences in reclamation performance bond and other financial assurance amounts required for operations under state law and regulations (AS 27.19 and 11 AAC 97) and federal law and regulations (FLPMA, federal mining laws and 43 CFR subparts 3715 and 3809), pursuant to the terms of this agreement the statewide bonding pool will provide full funding to reclaim an operation that is in default so as to fulfill the requirements of all approved reclamation plans for such operations, including operations on BLM lands which have been approved for participation in the statewide bonding pool per Section IV B of this agreement.
- B. **Participation in Statewide Bonding Pool.** In lieu of providing for individual financial guarantees, operations required to have financial guarantees under the applicable state or federal laws and regulations, may, if approved, participate in the statewide bonding pool pursuant to AS 27.19.040 and 11 AAC 97. Operations on BLM lands required to obtain financial guarantees under federal law which choose to participate in the statewide bonding pool must comply with the applicable state regulations unless otherwise noted in this AGREEMENT. Administration of the statewide bonding pool is performed by the ADNR, Division of Mining, Land, and Water and that Division must fully process and approve participation in the statewide bonding pool prior to commencement of operations on BLM or state lands. Operators using the statewide bonding pool will not have to comply with 43 CFR 3809.552, .553, or .554, which pertain to individual financial guarantees and are thus inapplicable.
- C. **Determining Cost for Statewide Bonding Pool.** The cost to participate in the statewide bonding pool will be calculated by multiplying the total number of acres to be disturbed by the approved operator by \$150.00. The statewide bonding pool payment consists of a refundable reclamation deposit of \$112.50 per acre and an annual non-refundable administrative fee of \$37.50 per acre. The same deposit and fees, except as modified by policy, regulation, or statute, will be required for operations on BLM lands which participate in the statewide bonding pool, regardless of whether the operation is notice level or plan level operation, but this provision in no way limits the operators' obligation to pay for the full amount of the costs for reclamation should the operator fail to perform the required reclamation.
- D. **Separate Tracking for Operations on BLM Lands.** For facilitation of accounting and tracking purposes by ADNR, Division of Mining, Land and Water Management, operations on BLM lands will be tracked separately from operations on state land in the statewide bonding pool.
- E. **Determining Acreage.** Acreage determination and field verification for notice level or plan level operations for bonding purposes on BLM lands will be the responsibility of BLM.
- F. **Form for Federal Operators.** Operations on BLM lands using the statewide bonding

pool will use the Annual Placer Mining Application (APMA) form with a separate statewide bonding pool form attached. The bond form will be signed by the authorized officers of BLM and ADNR and the applicant. The original form, or copy thereof, containing all three signatures will be required by both BLM and ADNR before approval for the bond can be given by either agency. These acreage and bond fee calculations on the bond form will be the basis for all subsequent bond actions and may be amended from time to time with approval of BLM and ADNR.

- G. **Ability to Use Statewide Bonding Pool After Forfeiture.** In cases where ADNR or BLM has determined an operator has violated his reclamation plan resulting in bond forfeiture, future bonding of an operation by such operator may be allowed, subject to the discretion of ADNR and BLM, after the operator has repaid the ADNR or BLM for funds expended to perform the reclamation, and after having posted the reclamation risk assessment fee provided in AS 27.19.070(c) “equal to five times the bond liability for the proposed mining operation.”
- H. **Limitations on Use of the Statewide Bonding Pool.** An operation will be allowed to participate in the statewide bonding pool for a disturbance of up to 40 acres; however, an operation may request participation in the statewide bonding pool for more than 40 acres of disturbance and may be allowed to participate after providing calculations acceptable to the ADNR and BLM that the reclamation liability requested of the bonding pool will not exceed 33% of the unrestricted assets of the bonding pool at the time of application; provided further that any operation that is approved for the bonding pool may be renewed and continue disturbance at the levels previously approved if BLM and ADNR determine that concurrent reclamation is occurring to the extent practical.
- I. **Cyanide and Chemical Leachate Not Allowed.** ADNR will not authorize and BLM will not accept use of the statewide bonding pool for federal operations on BLM lands if an operation will use cyanide or other chemical leachate.
- J. **ADNR or BLM Discretion.** The statewide bonding pool will not be available for operations on BLM lands in any instance where ADNR or BLM, in their sole discretion, determines that the statewide bonding pool shall not be used.
- K. **BLM Access to the Statewide Bonding Pool for Reclamation.** In the event reclamation is not performed according to the approved reclamation plan on BLM land, BLM will notify the operator and ADNR.
 - 1. If the on the ground situation requires immediate or prompt reclamation or remediation to avoid or correct unnecessary and undue degradation or environmental hazards, the following procedures apply:
 - a) BLM will work with ADNR and representatives of the mining industry in order to accomplish reclamation or remediation in a timely manner without requiring forfeiture under 43 CFR 3809.596;
 - b) If BLM determines that reclamation or remediation will not be timely accomplished under the preceding paragraph, BLM will offer ADNR the opportunity to complete the reclamation;
 - c) If ADNR declines to accept responsibility for the reclamation or remediation, or fails or refuses to complete the reclamation within a reasonable time period agreed to by ADNR and BLM, ADNR will make the required amount available from the statewide bonding pool

- to BLM to complete reclamation.
 - d) Following reclamation, BLM will send a letter and/or request that the Department of Justice send a letter demanding reimbursement to the statewide bonding pool from the operator and any other responsible parties for the funds paid from the statewide bonding pool as a means to avoid legal action;
 - e) If the operator or other responsible parties do not repay the statewide bonding pool, as a matter of discretion BLM will assist ADNR by using all practical legal remedies to recover funds from the operator and any other responsible parties to repay the funds taken from the bonding pool.
2. If the on the ground situation does not require immediate or prompt reclamation or remediation to avoid or correct unnecessary and undue degradation or environmental hazards, the following procedures apply:
- a) BLM will send a letter and/or request that the Department of Justice send a letter demanding performance by the operator and any other responsible parties as means to avoid legal action;
 - b) If the operator or other responsible parties do not perform the required reclamation or remediation, as a matter of discretion BLM will pursue all practical legal remedies to recover funds from the operator and any other responsible parties to repay the funds taken from the statewide bonding pool;
 - c) If legal action does not accomplish reclamation or remediation, BLM will work with the ADNR and representatives of the mining industry to accomplish reclamation in a timely manner without requiring forfeiture under 43 CFR 3809.596;
 - d) If BLM determines that reclamation or remediation cannot be accomplished by one of these groups, BLM will offer the ADNR the opportunity to complete the reclamation;
 - e) If ADNR declines to accept responsibility for the reclamation or remediation, ADNR will make the required amount from the statewide bonding pool available to BLM to complete reclamation within 60 days of the offer required by paragraph K.2.d above.

L. No Dollar Per Acre Limitation on Reclamation Funding. The amount of funding that ADNR will make available to BLM under section K of this memorandum for any incident or violation is the amount necessary to fulfill the requirements of the approved reclamation plans and is independent of the acreage required to be reclaimed. If required, ADNR may make available funding equal to the unrestricted corpus of the statewide bonding pool to accomplish reclamation under this memorandum.

V. Coordination:

- A. ADNR and BLM will promptly inform the other party to this AGREEMENT of any new or possibly heretofore unknown activities or policies affecting bonding that will concern and involve either agency. ADNR and BLM will also promptly inform the other party to this AGREEMENT of any future changes in rule or policy of the agency.

- B. ADNR and BLM will meet on an annual basis to coordinate activities, resolve issues of mutual concern, exchange information on policies and procedures, and discuss any other matter of mutual concern that affects the implementation of this AGREEMENT.
 - C. ADNR and BLM will exchange with each other a list of their respective minerals field personnel and the areas of responsibility of such personnel.
 - D. The State of Alaska Annual Placer Mining Application (APMA) will be accepted by BLM as the form of notice required by 43 CFR 3809.300 through .336 or as the form of plan of operations required by 43 CFR 3809.400 through .412. Additional information may be required by BLM on a case by case basis.
 - E. Operators on BLM lands using the statewide bonding pool are required to submit their APMA with signed bond form directly to the Division of Mining, Land and Water of ADNR for processing and distribution in accordance with ADNR guidelines.
- VI. Limitations: This AGREEMENT is intended to meet the financial guarantee requirements of 43 CFR sections 3809.570 and 3809.571. The requirements of this AGREEMENT are not intended to waive or otherwise limit any other part of 43 CFR subpart 3809, or any other federal or state laws, regulations or rules, or any other requirements or duties under such laws or regulations. All operators shall fully comply with all applicable federal and state laws, regulations and rules pertaining to exploration, mining and related reclamation.
- VII. Effective Date:
- A. This AGREEMENT shall become effective upon signature by the Commissioner of ADNR and the Alaska State Director of the BLM, and will remain in force unless modified by agreement of both agencies or unless terminated by either agency after 90 days written notice to the other agency. The parties agree to implement the terms and conditions of this AGREEMENT as of the date of the later of the signatures below.
 - B. In the event this AGREEMENT is terminated, each agency agrees to maintain bonds existing at the date of termination of this AGREEMENT until such time as an agreement can be reached between ADNR and BLM to replace or release the bonds. Bonds existing on the date of termination of this AGREEMENT shall remain in effect through the remaining term of the approved mining reclamation plan that was valid on the date this AGREEMENT is terminated.
- VIII. Amendments: Amendments to this AGREEMENT may be proposed at any time by any party to this AGREEMENT and shall become effective upon written approval by all parties to this AGREEMENT.

/s/ Tom Irwin
Commissioner
Department of Natural Resources
State of Alaska

August 6, 2003
Date

/s/ Henri R. Bisson
Director, Alaska State Office
Bureau of Land Management
United States Department of Interior

August 6, 2003
Date